

# CHAPTER 9.

# ADMINISTRATION

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## DIVISION 9.1. REVIEW AUTHORITY

### Sec. 9.1.1. Summary of Review Authority

The following table summarizes the review, approval, and appeal authority of the various review bodies and officials that implement and administer the Zoning Ordinance.

APPROVAL PROCESS	REVIEW AND APPROVAL AUTHORITY						NOTICE		
	Neighborhood Planning Unit	Development Review Committee	Director	Zoning Review Board	Board of Zoning Adjustment	City Council	Posted	Mailed	Published
<b>Legislative Review</b>									
Zoning Amendment	Sec. XX	RR	RR	RR-PH		D-M	Y	Y	Y
Special Use Permit	Sec. XX	RR	RR	RR-PH		D-M	Y	Y	Y
Transfer of Development Rights	Sec. XX	RR	RR	RR-PH		D-M	Y	Y	Y
<b>Historic Review</b>	Sec. XX								
<b>Permit Review</b>									
Common Review Procedures	Sec. XX		D						
Development Review	Sec. XX		RR	D					
Sign Permit	Sec. XX		D						
Temporary Use Review	Sec. XX		D						
<b>Administrative Relief</b>	Sec. XX								
Administrative Modification			D						
Administrative Variation		RC	D						
<b>Quasi-Judicial Review</b>	Sec. XX								
Variance		RR	RR		D-PH		Y	Y	Y
Appeal of Administrative Decision					D-PH		Y	Y	Y

**KEY:** RC = Review and Comment RR = Review and Recommend D = Final Decision  
 -PH = Public Hearing -M = Meeting Y = Required

### Sec. 9.1.2. **Neighborhood Planning Unit (NPU)**

Neighborhood Planning Units (NPUs) have those powers and duties expressly identified in this Chapter, including, but not limited to, the following:

#### **A. Review and Recommend**

To review and provide recommendations on applications for:

1. Legislative Review; and
2. Variance.

#### **B. Review and Comment**

To review and provide comments, if desired, on applications for:

1. Administrative Variation.

### Sec. 9.1.3. **Development Review Committee (DRC)**

Development Review Committees (DRCs) have those powers and duties expressly identified in this Chapter, including, but not limited to, the following:

#### **A. Review and Recommend**

To review and provide recommendations on applications for Development Review.

### Sec. 9.1.4. **Director**

The Office of Zoning and Development, through the Director, their staff, or their designee is delegated the authority to administer and enforce the Zoning Ordinance. A designee may be another official in the City of Atlanta who has been specifically designated or appointed by the Director to carry out certain duties or powers on their behalf. This includes the authority to review for compliance with the Zoning Ordinance applications for building permits and applications for minor site plan amendments previously approved by the City Council. This also includes the authority to accept and process applications, to reject incomplete applications, and to approve, to approve with conditions, or to deny applications not otherwise delegated to a board or reserved by the City Council. The Director is responsible for determining whether applications for building permits as required by the Building Code are in accord with the requirements of the Zoning Ordinance, and no building permit will be issued without the Director's determination that plans conform to applicable zoning regulations.

The Director has those powers and duties expressly identified in this Chapter, including, but not limited to, the following:

#### **A. Review and Recommend**

To review and provide recommendations on applications for:

1. Legislative Review; and
2. Quasi-Judicial Review.

## **B. Decision**

To review and decide on applications for:

1. Development Review;
2. Sign Permit;
3. Temporary Event Permit;
4. Administrative Modification; and
5. Administrative Variation.

### **Sec. 9.1.5. Zoning Review Board (ZRB)**

The Zoning Review Board (ZRB) is delegated the authority to conduct the state law required public hearing preceding zoning decisions by the City Council. The ZRB is the exclusive forum for the conducting of public hearings before zoning decisions by the City Council. The ZRB has those powers and duties expressly identified in this Chapter, including, but not limited to, the following:

#### **A. Review and Recommend**

To review and provide recommendations on applications for Legislative Review.

### **Sec. 9.1.6. Board of Zoning Adjustment (BZA)**

The Board of Zoning Adjustment (BZA) is delegated exclusive authority to hear and render decisions on applications for variances from the Zoning Ordinance, where not otherwise prohibited as provided below, and to hear and render decisions on appeals from the decisions of administrative officials in the administration and enforcement of the Zoning Ordinance. The BZA will sit as a quasi-judicial board making quasi-judicial decisions, as defined by state law, pursuant to standards below. The Board of Zoning Adjustment (BZA) has those powers and duties expressly identified in this Chapter, including, but not limited to, the following:

#### **A. Decision**

To review and decide on applications for Quasi-Judicial Review.

### **Sec. 9.1.7. City Council**

The City Council has those powers and duties expressly identified in this Chapter, including, but not limited to the following:

#### **A. Decision**

To review and decide on applications for Legislative Review.

## DIVISION 9.2. **LEGISLATIVE REVIEW**

### Sec. 9.2.1. **Applicability**

Legislative Review is required for the following:

- A. **Zoning Text Amendment.** A proposed amendment to the Zoning Ordinance.
- B. **Rezoning.** A proposed amendment to the official zoning map from one zoning classification, including form and use districts, to another, or to change the boundaries of an existing zoning district, including overlay districts.
- C. **Special Use Permit.** An application for uses of substantial significance or of unusual operational characteristics permitted only by Special Use Permit in the zoning district.

### Sec. 9.2.2. **Application Submittal**

#### A. **Rezoning**

1. Applicants seeking a rezoning must schedule a pre-application meeting with the Concept Review Committee (CRC) to discuss the procedures, standards, and regulations required for approval through Legislative Review. This requirement may be waived at the discretion of the Director.
2. Following the pre-application meeting, applicants may start the application process. To begin, a complete application form, required plans, and review fees must be filed with the Director.

#### B. **Withdrawal**

An applicant may withdraw their application for legislative review at any time before the public hearing by submitting written notice of withdrawal.

### Sec. 9.2.3. **Application Review**

#### A. **Director Review**

The Director will review the facts of each application and will submit written findings of fact and recommendations to the Zoning Review Board (ZRB) at or before the time each application is heard. The Director may recommend that the ZRB impose one or more conditions of approval, whether proposed by the applicant or not, relating to the application that they believe may be necessary in the particular case to protect the public interest should the application be approved.

#### B. **Notice**

##### 1. **Published Notice**

At least 15 but not more than 45 days before the date of the hearing, the Director must cause to be published within a newspaper of general circulation within the territorial boundaries of the City a notice of the hearing. The notice will state the date, time, place, and purpose of the hearing.

## 2. Additional Notice in Certain Cases

If a zoning decision of the City Council is for the rezoning of property or a Special Use Permit and the rezoning or Special Use Permit is initiated by a party other than the City, then the following are required:

### a. Published Notice

In addition to the requirements of published notice in subsection **B.1** above, the published notice must include the location of the property, the present zoning classification of the property, and the proposed zoning classification of the property;

### b. Posted Notice

A sign containing information stated in subsection **B.2.a** above must be placed by the applicant unless otherwise directed by the Director in a conspicuous location on the property not less than 15 days nor more than 45 days before the date of the hearing; and

### c. Mailed Notice

The Director must also cause notice of the date, time and place of the hearing and the nature of the proposed change to be sent by regular mail, with mailing postmarked at least 15 days nor more than 45 days before the hearing addressed to property owners (as ownership and address appears on the tax records of Fulton or DeKalb County) of all property within 300 feet of the property involved in the proposed change.

## C. Zoning Review Board (ZRB) Public Hearing

### 1. Procedure

- a. Before the City Council takes action resulting in a zoning decision, as defined by state law (currently O.C.G.A. § 36-66-3(4)), the ZRB will conduct a hearing on the proposed action. Where the proposed action includes any combination of zoning decisions to rezone property from one or more zoning classifications, including form or use districts (collectively the zoning classification) to different classifications, or a Special Use Permit, for the same property, only 1 public hearing is required.
- b. The ZRB may adopt policies and procedures not inconsistent with state law or the Zoning Ordinance governing the conducting of the public hearing including the matter presented, order of presentation, time limits for each speaker, number of speakers, decorum and order.
- c. An equal amount of time for the presentation of data, evidence, and opinion will be afforded to proponents and opponents of each zoning decision. The minimum amount of time must be at least 10 minutes per side for the presentation of data, evidence, and opinion of each zoning decision.
- d. Printed copies of these policies and procedures will be available for distribution to the general public. Printed copies of these policies and procedures will be available at each hearing.

## 2. Action by the ZRB

- a. The ZRB will make separate findings of facts and conclusions on each proposed amendment to the Zoning Ordinance or Special Use Permit. The ZRB may make its own findings or adopt those of the Director.
- b. The ZRB may recommend approval, approval with conditions, withdrawal, deferral to the next regular meeting or to a date certain, or denial of the proposed action. The ZRB may also, either by majority vote or tie, send forth a recommendation of “no recommendation.”
- c. As soon as practicable, but in no event later than the day before the City Council meeting at which the zoning decision is scheduled to be considered, the Secretary to the ZRB will transmit the following by e-mail to each City Council member:
  - i. A hyperlink to the video of the public hearing;
  - ii. A verbatim transcript of the hearing; or
  - iii. Meeting minutes summarizing the content of each public speaker’s comments.
  - iv. The purpose of this requirement is to inform the City Council in a meaningful way of what happened at the ZRB hearing.

## D. City Council Decision

1. Upon compliance with the procedures in this Section and the receipt of reports and recommendations from the Director and the ZRB, the City Council will proceed to act on the proposed changes, by passing or rejecting the amendments, or suspending action where prior changes in comprehensive development plans are required and City Council finds reasonable justification for considering such changes.
2. At the time each zoning case is presented to the City Council for action, it must be provided with a copy of the submission of the applicant, the report and recommendation of the Director, the recommendation of the appropriate Neighborhood Planning Unit (NPU) if any, at the time each zoning case is presented to them for action.

## Sec. 9.2.4. Criteria for Review and Decision

### A. Zoning Amendment and Rezoning

The Director, Zoning Review Board, and City Council will each consider the following standards when recommending action on a zoning decision to rezone or to amend the text of the Zoning Ordinance:

1. **Compatibility with Comprehensive Development Plan.** Whether the proposal is compatible with the Comprehensive Development Plan. Compatibility refers to both the written policies, goals and objectives, the development pattern map set forth in the plan, any local area plans incorporated in the Comprehensive Development Plan, and Atlanta City Design. The Director will not recommend any change not in accord with adopted Comprehensive Development Plans but may, where they see fit, recommend changes in such plans, following which, if such changes in plans are officially adopted, the zoning change may be reconsidered without prejudice and without a new application if an application is involved.

2. **Availability of and effect on public facilities and services.** The availability of public facilities and services and the effect the proposed change would have on demands for public facilities and services in the area in which the change is proposed or generally. Such facilities and services include but are not limited to water supply, sewerage, drainage, transportation, schools, fire and police protection, and solid waste collection and disposal.
3. **Availability of other land suitable for proposed use.** The availability of other appropriate land already zoned for the proposed use, generally and in the area of the proposed change. Whether generally, or in the area of the proposed change, the change would have adverse environmental effects on the balance of land uses by removing land from a category for which it is suited, and for which there is a greater public need, and changing it to a category for which the public need is lesser.
4. **Effect on character of the neighborhood.** The effect of uses permitted under the proposed change on the surrounding neighborhood and must report any substantial probably adverse influences on desirable living conditions or sustained stability, or any tendencies toward blight and depreciation likely to result from the change.
5. **Suitability of proposed use.** Whether the zoning proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property.
6. **Effect on adjacent property.** Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property.
7. **Economic use of current zoning.** Whether the property to be affected by the zoning proposal has a reasonable economic use as currently zoned.
8. **Other conditions.** Whether there are other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

## B. Special Use Permit

### 1. General Criteria

Although the City Council previously made the legislative determination that the special use is appropriate in the district generally, the special use may not be appropriate on the property for which the Special Use Permit is sought. Accordingly, the City Council must make a case-by-case decision. In doing so, it must consider and anticipate the special use's potential conflict with existing permitted uses. This tool affords the City Council the flexibility of permitting the proposed use upon considerations of the standards set out in the Ordinance, or in the discretion of the local governing body. The Director, Zoning Review Board and the City Council will consider the following when recommending and deciding the grant or denial of a Special Use Permit:

- a. **Use allowed.** The use is allowed by way of Special Use Permit in the zoning district. No application may be accepted unless the use is allowed by way of Special Use Permit in the zoning district or unless a text amendment to allow such use by Special Use Permit is introduced by the City Council before or at the time of the introduction of the ordinance to grant the Special Use Permit.

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- b. **Use standards.** Whether the special use complies with all specific use standards, if any, set forth elsewhere in the Zoning Ordinance without the granting of any variance.
- c. **Effect on adjacent properties.** Whether the special use is compatible with adjacent uses in the City in terms of location, scale, site design, hours of operation and operating characteristics. In measuring compatibility, the City Council will consider:
  - i. Whether the days and hours the special use will operate and the manner of operation will disturb the quiet use and enjoyment of adjacent property owners.
  - ii. The written and oral statements made by adjacent property owners during the public hearing.
  - iii. Whether the special use complies with the off-street parking and loading requirements. Where none exist, whether or not anticipated parking demand from the special use will have significant “spill-over” on-street parking into adjacent streets.
  - iv. Whether there are adequate areas for the storage and collection of trash and for the parking of service vehicles.
  - v. Whether the ingress and egress to the property and proposed structure or uses thereon will result in significant impacts to automotive and pedestrian safety and convenience, traffic flow and control, and access in case of fire or other catastrophe.
- d. **Buffering and screening.** The extent to which proposed buffering or screening will alleviate such potentially adverse effects as may be created by noise, glare, odor, lighting, signs or traffic congestion.
- e. **Duration.** The length of time regarding the duration of the permit, if any.
- f. **Mitigation.** The extent to which changing circumstances or conditions proposed by the applicant or imposed by the City Council will alleviate the potential adverse effects suggested by staff or adjacent property owners during the application process.

**2. Criteria for Data Centers**

All applications for a Special Use Permit for a data center must, in addition to the other application requirements of this Section, provide the following:

- a. **Water consumption plan.** Outlining the total water requirements of the data center, including cooling needs, and any strategies to reduce or mitigate excessive water usage. The plan must demonstrate that the water usage will not significantly strain the City of Atlanta’s water supply, which serves both the City and surrounding metropolitan areas from the Chattahoochee River.
- b. **Water conservation and sustainability plan.** Which includes measures to minimize the data center’s impact on regional water resources, such as the use of water-efficient cooling technologies and closed-loop systems.
- c. **Energy consumption plan.** Outlining estimates of peak electricity demand and strategies for mitigating strain on local power infrastructure, including proposed improvements or alternatives to minimize the need for additional transmission lines.

- d. **Transmission line impact assessment.** Identifying the need for new or upgraded transmission lines to meet the data center’s electricity requirements. This assessment must include the potential environmental impact on public and, including tree removal from city-owned land and rights-of-way.
- e. **Tree preservation and reforestation plan.** Outlining efforts to minimize tree removal and enhance urban forestry efforts, especially when transmission lines cross public land or park areas.
- f. **Stormwater management plan.** Which addresses how the site’s development and operation will manage stormwater runoff, as well as mitigation measures to prevent negative impacts on local water systems.
- g. **Additional information.** Any additional information required by the City of Atlanta’s Department of City Planning, Department of Watershed Management, Department of Parks and Recreation, Department of Enterprise Assets Management, or other relevant City Departments.

## Sec. 9.2.5. **Action After the Decision**

### **A. Effect of Denial**

1. For applications initiated by an applicant, the City Council may decide to reject or otherwise vote to not approve a proposed zoning amendment, rezoning, or Special Use Permit application, resulting in a defeated zoning decision. The Mayor may veto a City Council decision to approve an application, resulting in a defeated zoning decision.
2. If the zoning decision is for the rezoning of property and the amendment to the Zoning Ordinance to accomplish the rezoning is denied by the City, then the same property may not again be considered for rezoning until the expiration of at least 12 months immediately following the denial of the amendment by the City or the conclusion of related judicial proceedings.
3. If the zoning decision is for the approval of a Special Use Permit and the ordinance to approve the permit is denied by the City, then the same property may not again be considered for the same Special Use Permit until the expiration of at least 6 months immediately following the denial of the Special Use Permit by the City or the conclusion of related judicial proceedings.

### **B. Modification of Approved Conditional Site Plan**

#### **1. Administrative Approval of Minor Revisions**

- a. Minor revisions to an approved site plan that was approved as a condition of rezoning or Special Use Permit by City Council may be approved by the Director.
- b. Minor revisions include, but are not limited to, the following:
  - i. Reductions in the gross floor area of a building.
  - ii. Increases in outdoor amenity spaces.
  - iii. Adjustments to parking counts that do not reduce the number of spaces below the minimum required for the applicable zoning district.

- iv. Minor revisions to internal layout, including but not limited to building or parking placement, provided they do not increase height or density, or reduce required setbacks.

## 2. Major Revisions Require New Application

- a. Any revision not defined as minor is considered major and must be submitted as a new application.
- b. Major revisions include, but are not limited to, the following:
  - i. Increases in the total number of dwelling units or floor area of nonresidential use.
  - ii. Increases in the maximum building height shown on the approved plan.
  - iii. Any change to a use category not identified on the approved site plan or in the associated conditions.
  - iv. Relocation or addition of driveways or vehicular access points that alter traffic circulation or safety.
  - v. Reduction in required setbacks, open space, or tree preservation areas established through the site plan or conditions.

## 3. Effect on Application Status

When a revision to an approved site plan requires a new application, the application is not considered defeated and is not subject to the time constraints of *subsection A.2.* or *A.3.* above.

## Sec. 9.2.6. Alternative Legislative Procedures

### A. Procedure for Annexation

If the rezoning is for property to be annexed into the City, then either:

1. The procedures required by this Section will be completed for such rezoning, except for the final vote of the City Council, before adoption of the annexation ordinance or the effective date of any local act of the General Assembly but no sooner than the date the notice of the proposed annexation is provided to the governing authority of the county as required under OCGA § 36-36-6;
2. The public hearing required by *Sec. 9.2.3.C.* will be conducted before the annexation of the subject property into the City;
3. In addition to the other notice requirements of this Section, the City must cause to be published within a newspaper of general circulation within the territorial boundaries of the county wherein the property to be annexed is located a notice of the hearing as required under the provisions of *Sec. 9.2.3.B.*, as applicable, and must post a sign on the property when required by *Sec. 9.2.3.B.*; and
4. The zoning classification approved by the City following the required public hearing will become effective on the later of:
  - a. The date the zoning is approved by the City;

- b. The date that the annexation becomes effective pursuant to OCGA § 36-36-2; or
  - c. Where a county has interposed an objection pursuant to OCGA § 36-36-11, the date provided for in paragraph (8) of subsection (c) of said state Code Section; or
5. By virtue of the adoption of the Zoning Ordinance, and in lieu of the procedures set forth in subsection D of this Section, the City may provide in the annexing ordinance its intent to exercise the authority set forth in OCGA § 36-66-4(e) that all annexed property will be zoned by the City, as a qualified municipality, without further action, for the same use for which that property was zoned immediately before such annexation. Property which is zoned pursuant to this subsection may have such zoning classification changed upon compliance with the other provisions of this Division.

## **B. Procedure for City-Initiated Amendments for Multiple Dwelling Units**

### **1. Applicability**

- a. When a proposed zoning amendment or rezoning is initiated by the City and:
  - i. Is an amendment of the Zoning Ordinance to revise one or more zoning classifications or definitions relating to single-dwelling units on property so as to authorize multiple dwelling units on property pursuant to such classification or definitions, or to grant permission, under certain or all circumstances, for property owners to deviate from the existing zoning requirements of a single dwelling unit zoning; or
  - ii. Provides for the abolition of all single dwelling unit zoning classifications within the territorial boundaries of the City; or
  - iii. Results in the rezoning of all property zoned for single dwelling units within the territorial boundaries of the City for multiple dwelling units on property,then in such case, such zoning decision must be adopted in the procedural manner set forth in *subsection 2* below.
- b. This procedure does not apply to zoning decisions for the rezoning of property from a single dwelling unit on a property to multiple dwelling units on a property when the rezoning is initiated by the owner or authorized agent of the owner of such property or when the City adopts a Zoning Ordinance or Zoning Map applicable to the entire land area under the governance of the City, as opposed to a subset of parcels or land under the governance of the City.

### **2. Procedure**

- a. The zoning decision will be adopted at two regular meetings of the City Council, during a period of at least 15 but not more than 45 days apart; and
- b. Before the first ZRB meeting provided for in *Sec. 9.2.3.C.*, at least two public hearings before the Zoning Review Board will be held on the proposed action. Such public hearings will be held at least 3 months and not more than 9 months before the date of final action on the zoning decision. Furthermore, at least 1 of the public hearings must be held between the hours of 5:00 P.M. and 8:00 P.M. The hearings required by this paragraph will be in addition to

the ZRB hearing required by **Sec. 9.2.3.C**, such that there will be a total of 3 public hearings before the Zoning Review Board.

### 3. Notice

The City must give notice of such hearings required by this paragraph by:

- a. Posting notice on each affected premises in the manner prescribed by **Sec. 9.2.3.B**; provided, however, that when more than 500 parcels are affected, in which case posting notice is required every 500 feet in the affected area; and
- b. Publishing in a newspaper of general circulation within the territorial boundaries of the City a notice of each hearing at least 15 days and not more than 45 days before the date of the hearing; and
- c. Both the posted notice and the published notice must include a prominent statement that the proposed zoning decision relates to or will authorize multiple dwelling units or give permission to the property owner to deviate from the zoning requirements of a single dwelling unit zoning of property in classification previously relating to single dwelling units. The published notice must be at least 9 column inches in size and must not be located in the classified advertising section of the newspaper. The notice must state that a copy of the proposed amendment is on file in the Office of the Municipal Clerk and in the Office of the Clerk of the Superior Court of Fulton County for the purpose of examination and inspection by the public. The City will furnish anyone, upon written request, a copy of the proposed amendment, at no cost.

## Sec. 9.2.7. Transfer of Development Rights (TDR)

### A. Intent

The City's TDR program provides a voluntary uniform mechanism for unused development rights to be severed from one property, the "sending property," and transferred to another property, the "receiving property." The program also allows development rights to be severed and held or sold by an entity for future transfer or conservation purposes. The intent is to help preserve and maintain natural, recreational, environmental, historic, cultural and other important resources by removing excess development rights from those resources and allowing those rights to be held, sold, or transferred. This Section contains the regulations governing these transfers citywide. The program is intended to promote the public health, safety and welfare consistent with the Comprehensive Development Plan and the requirements of O.C.G.A § 36-66A-1 et seq., as amended.

### B. Definitions

1. **Development Rights.** The maximum square footage expressed in floor area ratio or building height in feet currently authorized by the Zoning Ordinance as applied to a sending property. The term excludes:
  - a. The square footage and building height in feet of all existing development on the sending property;
  - b. Development rights attributable to a nonconforming status of the sending property; and

- c. Development rights attributable to a zoning bonus unless the requirements necessary to secure the bonus have been achieved on the sending property.
2. **Sending Area.** An area of land consisting of one or more parcels from which development rights are authorized to be severed or transferred to a receiving area. Sending areas consist of the following:
  - a. The boundaries of all properties designated as a Landmark Building or Site (LBS) or Historic Building or Site (HBS) pursuant to the City of Atlanta Historic Preservation Ordinance;
  - b. The boundaries of all properties designated as a Landmark District (LD) or Historic District (HD) in accordance with the City of Atlanta Historic Preservation Ordinance and having one or more non-residential buildings exceeding 5,000 square feet in floor area; or
  - c. The boundaries of any land possessing special characteristic(s) determined by resolution of the Mayor and Council to be deserving of future public use or protection through the TDR program.
3. **Sending Property.** A lot or parcel located within a sending area:
  - a. Designated as a LBS or HBS pursuant to the City of Atlanta Historic Preservation Ordinance that meets the TDR Special Use Permit requirements of this Section;
  - b. Designated as a LD or HD pursuant to the City of Atlanta Historic Preservation Ordinance and having one or more non-residential buildings exceeding 5,000 square feet in floor area that meets the TDR special use permit requirements of this Section; or
  - c. Possessing one or more special characteristics and which will be donated to or purchased by the City for public use or protection and that meets the TDR Special Use Permit requirements of this Section.
4. **Receiving Area.** Property within a Residential Mix, Mixed Use, or Industrial Mix Use District and the following legacy districts: Buckhead Village, Buckhead / Lenox Stations, and Midtown.
5. **Receiving Property.** A parcel within a receiving area that is zoned to allow multiple dwelling units, or mixed use, and that meets the TDR Special Use Permit requirements of this Section.
6. **Special Characteristic.** Farm land, woodland, flood plain, natural habitats, wetlands, groundwater recharge areas, recreation areas, or any other land that has unique aesthetic, architectural, or historic value.
7. **Suitable.** There are no substantially adverse environmental, economic or social impacts on the receiving property or on neighboring properties by virtue of the amount or type of development rights sought to be transferred.
8. **TDR Special Use Permit.** One of three types of Special Use Permits authorizing an applicant to sever, affix, or jointly transfer development rights after approval of an application meeting the appropriate criteria of this Section by the Mayor and City Council.
9. **Transfer of Development Rights.** The process by which excess development rights are severed from a sending property and sold, held for future transfer or conservation, or affixed to a receiving property.

## C. Sending Property Requirements

### 1. Historic Sending Properties

Any designated sending property as specified in *subsection (3)(a), (b), or (c)* above may apply to sever or jointly transfer development rights not utilized by the present development of the property. Designation alone is insufficient to sever or jointly transfer. The applicant also must show that the designated property meets the requirements of this Section. Any permitted use allowed on the designated property under the zoning ordinance as applied to the property may be severed or jointly transferred, except that density associated with uses not authorized by the zoning of a receiving property may not be transferred to that receiving property. Redevelopment of the designated property from which development rights have been severed or jointly transferred must be based on the property's remaining development rights and the conditions under which the TDR Special Use Permit was granted. This Section is not intended to alter the application of the City of Atlanta Historic Preservation Ordinance to the designated property.

### 2. Special Characteristic Sending Properties

Before the owner of the special characteristic property may apply to sever or jointly transfer development rights, preliminary approval by resolution of the Mayor and Council stating the City's intent to acquire the property by purchase or dedication associated with a TDR Special Use Permit must occur. Final approval by the Mayor and Council to acquire the property in accordance with City procedures for property acquisition must occur either as a part of the TDR Special Use Permit legislation or within 12 months of the permit's approval. The purchase price of property acquired by the City for this purpose must be reduced by the appraised value of the development rights which are severed or jointly transferred as a part of the TDR Special Use Permit. These TDR Special Use Permit may be approved only if they are made conditional on the final approval of the property's acquisition by the City. Failure of the City to acquire the property within the 12-month limit will automatically void the TDR Special Use Permit. Any permitted uses allowed on the special characteristic property under the Zoning Ordinance as applied to the property may be transferred, except that density associated with uses not authorized by the zoning of a receiving property may not be transferred to that receiving property.

## D. Receiving Property Requirements

In order for development rights to be affixed to a receiving property, the applicant must show that the receiving property meets the requirements of this Section. Contiguous individual parcels being developed under common ownership may apply to receive development rights under a single application but must indicate the manner in which the rights to be received are allocated among the parcels. Unless a higher percentage is required by the underlying or overlay zoning, at least 5% of the multiple dwelling units on the receiving property must be rented to tenants earning no more than 80% of the area median income.

## E. Application Procedures

All transfers of development rights require a TDR Special Use Permit. There are three types of TDR Special Use Permits depending on the action that is requested. The procedures for each type are as follows:

## 1. Type 1: Application to Sever Development Rights

The owner of a sending property may apply to the Office of Zoning and Development for a TDR Special Use Permit to sever development rights from the sending property. All development rights proposed to be severed must be available on the sending property and meet the requirements of this Section. Applications to sever development rights are authorized only for property that qualifies as a sending property located in a sending area. Each application must include the following:

- a. A statement specifying that the sending property is within a defined sending area and demonstrating that the property qualifies as a sending property.
- b. All materials required for a special use permit including a statement demonstrating compliance with the required criteria that are applicable to the severance application.
- c. A statement assuring that the character of the sending property will be preserved including specifics on how that will occur.
- d. A description of the landmark or historic designation or the special characteristics of the sending property and an explanation of the manner in which the landmark or historic designation or those special characteristics advance and promote the intent of the Zoning Ordinance.
- e. A survey and legal description of the sending property.
- f. A calculation of the amount and allowed uses of excess development rights that are proposed to be severed from the sending property including calculations showing that these excess development rights currently exist on the property as well as a calculation of the development rights that will be retained on the sending property.
- g. A draft affidavit meeting the requirements for recordation in the clerk's office of the county superior court in which the sending property is located that includes each of the following statements:
  - i. That the person executing the affidavit has the authority to do so on behalf of the owner and all other persons or entities including lienholders with an interest in the property.
  - ii. The amount and uses of development rights transferred with a placeholder for an attached copy of the final TDR Special Use Permit and reference to the SUP number and legislation number.
  - iii. That the current landowner and any persons or entities with an interest in the property, including without limitation any lienholders, consent to the prohibitions against future use of the development rights severed from the property in accordance with this Section and the TDR Special Use Permit.
  - iv. That the prohibitions against future use of the development rights severed from the sending property in accordance with this Section and the TDR Special Use Permit will be binding on the landowner or any other persons with an interest in the property as of the date that the instrument is recorded and that this instrument will bind every successor in interest to the landowner and any other person with an interest in the sending property.

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- v. That the affidavit is given with the owner's understanding that it has been relied upon by the City of Atlanta in the issuance of the TDR Special Use Permit benefiting and restricting the sending property.
- h. A draft deed of transferable development rights meeting the requirements for recordation in the clerk's office of the county superior court in which the sending property is located that severs the identified excess development rights from the sending property and sells, conveys or otherwise transfers those development rights in fee simple to the grantee. The draft deed of transferable development rights must include a placeholder for a copy of the final TDR Special Use Permit with a reference to the SUP number and legislation number.
- i. A statement that the applicant understands and will adhere to each provision contained in the draft affidavit and draft deed and that substantially similar instruments will be properly executed and recorded in the clerk's office of the county superior court in which the sending property is located and thereafter filed with the City within the times established by this Section.

## 2. Type 2: Applications to Affix Development Rights

The owner of a receiving property may apply to the Office of Zoning and Development for a TDR Special Use Permit to affix development rights that were previously severed from a sending property and not yet affixed to a receiving property. No application to affix development rights will be accepted unless the development rights sought to be affixed, as well as the current owner of those rights, are listed on the city's registration system. The resulting development on the receiving property may exceed the maximum floor area ratio or building height authorized under its present zoning but must otherwise comply with all zoning requirements. Development rights proposed to be affixed to a receiving property must meet all requirements of this Section. Each application must include the following:

- a. A statement specifying that the receiving property is within a defined receiving area and demonstrating that the property qualifies as a receiving property.
- b. All materials required for a special use permit including a statement demonstrating compliance with all required criteria.
- c. An affidavit by the owner of the development rights that are to be transferred to the receiving property stating that the owner is in lawful possession of the development rights to be transferred and agrees to the transfer. The affidavit must include an analysis demonstrating that the development rights sought to be affixed to the receiving property were properly created in accordance with the terms of the Zoning Ordinance, including a history of all transactions associated with the development rights back to the transaction that created such development rights showing that they are registered with the city and currently available to be affixed to the receiving property.
- d. A statement demonstrating the receiving property is suitable for the proposed development and can accommodate the transferable development rights proposed to be affixed to the property without substantial adverse environmental, economic, or social impact to the receiving property or to neighboring property.
- e. A survey and legal description of the receiving property.

- f. A site plan for the receiving property showing where and how the proposed transfer of development rights will be used.
- g. A calculation of the amount and allowed uses of development rights that are proposed to be affixed to the receiving property.
- h. A statement explaining how the project assures future protection of public interests and achievement of public objectives to the same or higher degree than would application of the zoning district regulations without approval of the application to affix the transferred development rights.
- i. A draft affidavit meeting the requirements for recordation in the clerk's office of the county superior court in which the sending property is located that includes each of the following statements:
  - i. That the person executing the affidavit has the authority to do so on behalf of the owner and all other persons or entities including lienholders with an interest in the receiving property.
  - ii. The amount and uses of development rights to be affixed with a placeholder for an attached copy of the final TDR Special Use Permit and reference to the SUP number and legislation number.
  - iii. That the current property owner and any persons or entities with an interest in the receiving property, including without limitation any lienholders, consent to the use of the transferred development rights and stating that all such rights sought to be utilized pursuant to the TDR Special Use Permit are fully and unconditionally owned by the property owner.
  - iv. A statement that the use of the transferable development rights remains with the property for the life of the development and cannot be severed from the property or otherwise transferred without the property being declared a sending property pursuant to a subsequent TDR Special Use Permit.
  - v. That the affidavit is given with the owner's understanding that that it has been relied upon by the City of Atlanta in the issuance of the TDR Special Use Permit benefiting and restricting the receiving property.
- j. A draft deed of transferable development rights meeting the requirements for recordation in the clerk's office of the county superior court in which the receiving property is located that sells, conveys or otherwise transfers the development rights in fee simple to the grantee. The draft deed of transferable development rights must include a placeholder for a copy of the final TDR Special Use Permit with a reference to the SUP number and legislation number.
- k. A statement that the applicant understands and will adhere to each provision contained in the draft affidavit and draft deed and that substantially similar instruments will be properly executed and recorded in the clerk's office of the county superior court in which the receiving property is located and thereafter filed with the city within the times established by this Section.

### 3. Type 3: Joint Applications to Simultaneously Sever and Affix Development Rights.

The owners of sending and receiving properties may jointly apply to sever development rights in a sending property and transfer those development rights to a receiving property in one joint TDR Special Use Permit application. Joint applications must contain all information required by TDR Special Use Permit Type 1 applications to sever development rights and Type 2 applications to affix development rights and may be acted on as one application.

## F. Processing the Application

The Office of Zoning and Development must review each TDR Special Use Permit application and make recommendations in accordance with [Sec. 9.3.4.B.](#) based on compliance with the requirements in that Section and those of this Section. TDR Special Use Permit applications must follow the procedures, public notice and hearing requirements in [Sec. 9.3.3.](#) After completion of that process, the Mayor and Council may approve a TDR Special Use Permit to sever, affix, or jointly transfer development rights if it is determined that the application meets all requirements for the Special Use Permit. If approved, a notation on the sending or receiving parcel indicating the case number of the TDR will be added to the Official Zoning Map.

### 1. Criteria

In reviewing and deciding on a TDR Special Use Permit, the following criteria, as applicable, will be considered:

- a. Whether or not the sending property meets the requirements contained herein and is therefore eligible for severance of development rights;
- b. Whether or not the receiving property meets the requirements contained herein and is therefore eligible for receipt of development rights;
- c. Whether or not the receiving property is suitable for the increased development allowed by the receipt of the additional development rights.
- d. Whether or not the sending property or the receiving property satisfies the general Special Use Permit standards in [Sec. 9.3.4.B.](#)

### 2. Additional Requirements

- a. **Registering development rights.** The Office of Zoning and Development must develop and implement a registration system for monitoring the severance, ownership, assignment and transfer of development rights authorized by this Section.
- b. **Private purchase and resale of development rights.** Development rights that have been severed in accordance with this Section may be purchased, sold, exchanged or otherwise conveyed by any person and held for conservation purposes or resale. If development rights have been severed in accordance with this Section and sold to another person without becoming affixed to a receiving property, the private parties to the transaction are required to register the change in ownership with the Office of Zoning and Development within 30 days of the purchase, including certified copies of the transfer agreement, deed, or other instrument of transfer. If the change in ownership is not so filed, the development rights will not be eligible to be used in any future application to affix those development rights until registered with the Office of Zoning and Development.

- c. **City purchase of development rights.** The City is authorized to purchase development rights in the same manner as any other interest in real property and may hold the development rights for conservation purposes or for resale.
- d. **TDR special use permit transfers.** Transfers of a TDR Special Use Permit are authorized in the same manner as other special use permits provided that all conditions in the TDR Special Use Permit continue to apply to the transferee.
- e. **Nature of transferred interests and taxation.** In accordance with O.C.G.A. § 36-66A-2.C.(8), development rights transferable under this Section are interests in real property and will be considered as such for purposes of conveyance and taxation. Once a deed of transferable development rights created pursuant to this Section has been sold, conveyed, or otherwise transferred by the owner of the parcel from which the development rights were derived, the transfer of development rights will vest in the grantee and become freely alienable. For the purposes of ad valorem real property taxation, the value of the transferable development rights will be deemed appurtenant to the sending property until the transferable development rights are registered as a distinct interest in real property with the appropriate tax assessor or the transferable development rights are used at a receiving property and become appurtenant thereto.
- f. **Rules regarding affixed rights.** Transferred development rights that are affixed to a receiving property by a recorded deed following approval of a TDR Special Use Permit are appurtenant to the receiving property and may be used on the property or transferred as an integrated part of any future sale of the property without further approval of the City in accordance with the site plan approved as part of the TDR Special Use Permit. Transferred development rights that are affixed to a receiving property by a recorded deed but not used on the receiving property cannot be severed or transferred without approval of a TDR Special Use Permit to do so.
- g. **Deed and affidavit recordation deadline.** Deeds of transferable development rights that sever development rights, affix development rights, or transfer development rights from a sending property to a receiving property, pursuant to a TDR Special Use Permit authorized by this Section, as well as the required affidavits, must be executed and recorded in the clerk's office of the county superior court in which the impacted property is located within 9 months from the date of approval of the authorizing TDR special use permit. These deeds and affidavits must contain all provisions required in the application for the TDR Special Use Permit as well as any conditions of the approval of the Special Use Permit. Failure to record both the required deeds and required affidavits within the time specified automatically voids the corresponding TDR Special Use Permit.
- h. **Filing deadline.** Certified copies of the recorded deeds and recorded affidavits required by subsection (g) must be filed by the holder(s) of the TDR special use permit with the Office of Zoning and Development within 30 days of their recordation. Failure to file the recorded deeds and affidavits with the Office of Zoning and Development within the required time automatically voids the corresponding TDR special use permit.
- i. **Future zoning actions affecting sending property.** Once a deed of transferable development rights severing development rights from a sending property has been recorded, no rezoning, text amendment or other zoning action may act to restore any of the severed development rights back to the sending property. If subsequent to the severance of development rights, a rezoning, text amendment or other zoning action increases development rights beyond what

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was previously severed from the sending property, only the incremental development rights may thereafter be severed. For example, if a floor area equal to "x" FAR was severed from the sending property and through a zoning action the new FAR is "x + 1.0" FAR, then only the 1.0 FAR increment may be severed prospectively.

- j. **Limitations on vested property interests.** TDR Special Use Permit authorize the actions specified in the permit legislation but do not accomplish the actual transfer authorized. Transfers of development rights become effective only upon the recording of the required deeds and affidavits and the filing of certified copies of these recorded instruments with the Office of Zoning and Development. No property interests vest or become able to be used on or transferred to any property until the deeds and affidavits required by this Section are timely recorded and filed with the Office of Zoning and Development. In addition, no property interests vest or become able to be used on or transferred to any property unless all conditions in the permit are followed. When a TDR Special Use Permit is voided according to this Section, it conveys no interest in property, and any effort to sever, affix or jointly transfer development rights on those properties will require a new application. This subsection does not apply to the purchase, sale, exchange, or other conveyance of transferable development rights after they have been severed from a sending property and before the rights being affixed to a receiving property.

## DIVISION 9.3. **HISTORIC REVIEW**

Reserved. For requirements, see *Chapter 6. Historic and Landmark Districts*.

## DIVISION 9.4. **PERMIT REVIEW**

### Sec. 9.4.1. **Common Review Procedures**

#### **A. Concept Review Committee (CRC)**

##### **1. Intent**

The Concept Review Committee (CRC) is a pre-submission meeting program for rezonings and subdivisions, among other land development activities. It serves as an opportunity for applicants to meet with representatives from the City's plan review agencies at the forefront of the project design stage to refine plans and scope in an open and organized format. The CRC is intended to save time for both the applicant and the City, by highlighting challenges, clarifying processes ahead of submission, and reducing the number of follow-ups and streamlining the overall review process. The CRC is not meant to extend the timeline or impose additional regulations, rather it is intended to provide technical feedback before beginning the entitlement and permitting process.

##### **2. Applicability**

The following intent, procedures, and standards apply to City staff review and comment before the submission of some applications. The Director, at their discretion, may request a review by the Concept Review Committee (CRC) before an application can be submitted.

##### **3. Procedure**

The Director may prescribe rules that require applicants to consult with the CRC before formal application submittal where proposed activity may involve land disturbance, tree impacts, or other land development activities.

##### **4. Standards**

Consideration by and comments or recommendations from the members of the CRC must be limited to the requirements of and compliance with relevant City requirements for land development.

#### **B. Building Permits**

##### **1. Applicability**

The Director will review the plan set included in the application for building permit to determine that the plans conform to the applicable zoning regulations.

##### **2. Plans Required**

All applications for building permits as required by the Building Code must be accompanied by electronically uploaded plans, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact size and location on the lot of the building or buildings and accessory building existing or to be erected, the existing and intended use of each building or part of a building, the number of dwelling or lodging units the building is designed to accommodate, and such other information regarding the lot and neighboring lots as may be required by the Director to determine and provide for enforcement of the Zoning Ordinance.

### 3. Survey Required

A survey must accurately depict all current existing conditions on the lot. All dimensions related to the location and size of the lot and any proposed buildings or additions must be based on an actual field survey. The lot and the location of proposed buildings or additions must be staked in the field prior to construction to facilitate inspection.

### 4. Director Decision

No permit for excavation or construction will be issued before the Director certifies that the plans, specifications and intended use conform to the provisions of the Zoning Ordinance. One copy of such plans will be returned to the owner when such plans have been approved by the Director.

### 5. Posting of Approved Building Permit

Whenever a building permit is issued by the Office of Buildings other than for repairs or alterations, the recipient of the building permit must post a copy of same on a sign not less than 6 square feet with the words "Notice of Issuance of Building Permit" in letters not less than 4 inches high in a conspicuous place on the effected property so that the sign and the permit can be easily viewed from the public street on which the property fronts. Said sign must be posted no later than 24 hours after the issuance of the building permit and may not be removed for 30 days. In the event the sign is not timely posted, the deadline to appeal an approved building permit will commence to run starting on the actual date of the sign posting.

## C. Occupancy Permits

### 1. For New or Altered Structures and Uses

- a. No person is permitted to use or permit the use of any structure or premises created, erected, changed, converted, enlarged or moved, wholly or partly, in use or structure, until a occupancy permit reflecting use, extent and location have been issued to the owner or tenant by the Director, Office of Buildings.
- b. Where a building permit is involved, such certificate must show that the structure or use, or both, to the affected part thereof, are in conformity with the provisions of the Zoning Ordinance; and it is the duty of the Director, Office of Buildings to issue such certificate if they find that all of the requirements of the Zoning Ordinance have been met, and to withhold such certificates unless they find that all of the requirements of the Zoning Ordinance have been met.

### 2. Temporary Occupancy Permits

A temporary occupancy permit for a part of a building or premises may be issued in accordance with general rules or regulations concerning such temporary certificates, and with such additional conditions and safeguards as are necessary in the circumstances of the case to protect the safety of occupants and the general public.

### 3. Occupancy Permits for Existing Uses or Structures

Upon written request from the owner and upon inspection to determine the facts in the case, if in conformity with the requirements of the Zoning Ordinance, the Director, Office of Buildings will

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issue a occupancy permit for any buildings, premises or use, certifying that the building, premises or use is in conformity with the provisions of the Zoning Ordinance.

**D. Conformity Requirements****1. Conformity to Applications**

Building or occupancy permits will be issued on the basis of plans and applications approved by the Director, Office of Buildings. When building permits, occupancy permits, and other permits are issued for property with conditional zoning or an approved variance, only the use, arrangement and construction set forth in such approved plans and application, subject to any conditions or safeguards attached thereto, are permitted. Any use, arrangement or construction other than that authorized or failure to observe any of the conditions or safeguards will be deemed a violation of the Zoning Ordinance.

**2. Zoning Conformance for Issuance of Business Occupational Tax Certificate**

The Department of Finance may not grant a business occupational tax certificate to any person or firm unless the business conforms to the regulations of the Zoning Ordinance in which it is located or is established as a legal nonconforming use, as determined by the Director.

**E. Application Completeness**

1. No application for any permit, including occupancy permits, zoning amendment, or other zoning action or document will be considered complete, nor may processing on such application begin, until all applicable fees, charges and expenses have been paid.
2. When a complete and proper application, including plans, has been filed or when a building permit has been issued, before the effective date of the Zoning Ordinance, or an amendment, nothing contained herein will require any changes in the plans, construction, size or designated use of a building, structure or part thereof if actual construction under such plans or permit is begun during the term of the building permit, including any extensions.
3. "Actual construction" is defined as building construction carried on diligently to include the placing of construction materials in permanent position and fastened in a permanent manner. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal will be deemed to be actual construction provided that work will be carried on diligently.

**F. Term of Approval**

Failure to begin construction on or before expiration of the building permit, or discontinuance of construction for 180 days will have the effect of voiding the permit. In such cases, the Director, Office of Buildings will require a new permit, which will be governed by regulations currently in effect.

**Sec. 9.4.2. Development Review****A. Intent**

There exist Development Review Committees (DRCs) established as advisory groups to review and to provide to the Director written comments and recommendations on proposed development activity within specified zoning districts as prescribed by their respective authorizing resolution (01-R-1003;

01-R-1795; 01-R-1796; 07-R-1457; 11-R-0102; 14-R-4377). It is the intent of the City Council that hereafter these committees provide review and written comments to the Director on that proposed development activity within those districts (or successor districts) as set forth below.

## **B. Applicability**

1. Development Review is required for any property within a zoning district where a Development Review Committee (DRC) is established by an authorizing resolution.
2. Development Review is required for the following project activities, unless noted as an exception below:
  - a. New construction;
  - b. Addition;
  - c. Site modification;
  - d. Replats or lot consolidations; or
  - e. Facade modification, where more than 50 linear feet of a street-facing facade is impacted.
3. The following project activities are exempt from Development Review:
  - a. Any project activity on lots with up to 2 primary dwelling units;
  - b. Additions or site modifications not visible from a street.

## **C. Application Review**

### **1. Development Review Committee (DRC) Review**

- a. After a complete application is submitted to the Office of Zoning and Development, the Director will refer the application to the DRC for review and recommendation. The application will include any administrative relief sought from the requirements of the Zoning Ordinance.
- b. Once the Director refers an application to the DRC, an applicant is required to present the application to the DRC 1 time.
- c. The DRC will have 30 days from the date an application is presented to the DRC to submit written comments and recommendations to the Director on the proposed development plan and any administrative relief sought from the district regulations.
- d. Presented means the appearance of the applicant at the next published DRC meeting following the application submittal. This review period will run concurrently with the Director's review and will not create undue delays in the processing of the application.

### **2. Director Decision**

- a. The Director will evaluate if the application conforms to the provision of the Zoning Ordinance, while considering the recommendation of the DRC, and approve, approve with conditions, or deny the proposed application.
- b. The Director will not be required to delay their decision on the application if the written recommendation from the DRC is not provided within the time period specified above.

## D. Criteria for Review and Decision

Consideration by and comments or recommendations from the DRC must be limited to the requirements of and compliance with the relevant zoning district, including any authorized administrative relief therefrom if justified by the applicant in reference to the public health, safety and welfare.

### Sec. 9.4.3. Sign Permit

See *Sec. XX. Sign Permit* for requirements.

### Sec. 9.4.4. Temporary Use Review

#### A. Intent

It is the intent of the City Council that the Director review and decide proposed temporary uses of land for 90 days or less, where permitted in the various districts. Temporary uses exceeding 90 days, including outdoor vending and urban gardens, require a Special Use Permit from the City Council, where permitted in the district. Temporary events requiring an outdoor events permit under *City of Atlanta Code of Ordinances, Chapter 142*, are not reviewed by the Office of Zoning and Development and are not required to meet the standards of this Section.

#### B. Applicability

The permitted use table in *Div. XX. Permitted Uses* establishes the allowed temporary uses and structures in each Use District.

#### C. Application Submittal

1. If a structure in connection with a temporary use is proposed and requires a building permit, the Director will perform such review and decision as part of the building permit application process.
2. If a structure in connection in a temporary use is not proposed or does not require a building permit, the Director will perform such review by way of a temporary use application on forms to be developed by the Director.

#### D. Application Review

##### 1. Director Decision

- a. The Director, or their designee, will review the application and decide if the proposed temporary use for 90 days or less is a permitted use in the district and complies with the standards governing such use. See *Division 4.6*.
- b. If permitted and compliant, the Director, or their designee, will approve the application as submitted or with such condition(s) as necessary to assure compliance with the standards governing such temporary use. If not permitted or compliant, the Director, or their designee, will deny the application, with written reasons for such denial.
- c. The review and decision will be made within 10 business days (unless a longer period is mutually agreed upon) of a complete application.

- d. The Director, or their designee, may revoke the approval if the temporary use violates the standards for such use or any conditions of such approval.

## DIVISION 9.5. **ADMINISTRATIVE RELIEF**

### Sec. 9.5.1. **Intent**

The City Council finds that where development plans propose strict compliance with the Zoning Ordinance, the review by the Director may be accomplished through the building permit application process. The City Council further finds that where development plans propose less than strict compliance with the Zoning Ordinance, more robust administrative processes are needed in order to adequately protect the public health, safety and general welfare. Sometimes the applicant requests this modification or variation. Other times, it is required after initial plan review by the Director. The City Council further finds that in such cases, there are complex or unusual technical determinations involving the Zoning Ordinance which are better handled within an administrative approval process designed to ensure, before the time and expense of detailed civil drawings, that such relief is warranted and that other than the relief sought, the zoning plan conforms to the Zoning Ordinance. This administrative process, known as administrative relief, is set forth in more detail below.

### Sec. 9.5.2. **Applicability**

- A. There are two types of certificates for administrative relief: a Certificate of Administrative Modification and a Certificate of Administrative Variation. Application for administrative relief must be reviewed and decided in the manner set forth in this Division. Relief beyond that authorized below is only authorized by variance granted by the Board of Zoning Adjustment, according to *Div. XX. Quasi-Judicial Review*.
  1. **Certificate of Administrative Modification.** Within *Ch. 3. Rules for Zoning Districts* and *Ch. 8. Development Standards*, express authorization is granted to the Director to reduce certain development controls a limited amount. When so authorized, the Director's approval takes the form of a Certificate of Administrative Modification.
  2. **Certificate of Administrative Variation.** Within *Ch. 3. Rules for Zoning Districts* and *Ch. 8. Development Standards*, express authorization is granted to the Director to reduce or waive certain development controls. When so authorized, the Director's approval takes the form of a Certificate of Administrative Variation.
- B. Administrative relief only applies to a zoning requirement or standard. Administrative relief is not permitted to replace or modify the method of measurement used to determine compliance with a standard.

### Sec. 9.5.3. **Application Submittal**

#### **A. Application Initiation**

A property owner, or any other person with notarized written consent of each property owner, may file an application with the Director for an administrative relief certificate for such property. The application must be submitted on a form provided for that purpose and must include all plans, reports, exhibits, or other information as may reasonably be required by the Director to make the necessary findings.

## **B. Plans Required**

All applications for an administrative relief certificate must be accompanied by electronically uploaded plans, including elevation and floor plans of the ground story, drawn to scale, showing the actual shape and dimensions of the lot to be built upon, the exact size and location on the lot of the building or buildings and accessory building existing or to be erected, the existing and intended use of each building or part of a building, the number of dwelling or lodging units the building is designed to accommodate, and such other information regarding the lot and neighboring lots as may be required by the Director to determine whether or not the administrative relief should be approved.

## **C. Survey Required**

All dimensions on such plans relating to the location and size of the lot to be built upon must be based on an actual survey.

## **D. Withdrawal**

An applicant may withdraw an application for administrative relief at any time prior to the Director's decision by submitting written notice of withdrawal.

## **Sec. 9.5.4. Application Review**

### **A. Director Decision**

1. The Director will examine the application and supporting materials for conformity with the requirements and stated intent of this part, and will within 30 days (unless a longer period is mutually agreed upon) of completion of the procedural requirements herein decide on the application. The Director may issue the certificate as applied for, may issue a certificate conditional upon changes from the application, set forth in writing, as necessary to assure conformity with the requirements and stated intent of the Zoning Ordinance, or may deny the application, with written reasons for such denial.
2. No administrative relief certificate may be issued before the Director certifies thereon that the plans, specifications and intended use conform to the provisions of the Zoning Ordinance. One copy of such plans will be returned to the owner when such plans have been approved by the Director.
3. Approval of the administrative relief certificate constitutes a determination by the Director that the zoning plans accompanying the certificate conform to all the requirements of the Zoning Ordinance, except as expressly approved by such Certificate of Administrative Modification or Administrative Variation. Approval of the certificate does not authorize any land disturbance of construction activity. Such activity is only authorized by a building permit issued by the Director of the Office of Buildings. So long as the approved zoning plan accompanying the certificate is included in the application for building permit and no deviation from said plan is proposed, the Director of the Office of Buildings will rely upon the certificate as conclusive proof that the application for building permit satisfies the requirements of the Zoning Ordinance.
4. No building or occupancy permit may be issued for any structure or use requiring an administrative relief certificate until such certificate has been obtained, and any such structure or use is in full accord with the requirements and limitations set forth in such certificate.

### Sec. 9.5.5. **Criteria for Review and Decision**

The Director may grant an administrative relief certificate only upon making all of the following findings:

- A. Either of the following are met:
  - 1. A plan proposed by an applicant, while not strictly in accord with regulations applying generally within the district, meets public purposes and provides public protection to an equivalent or greater degree; or
  - 2. In the particular circumstances of the case, strict application of a particular regulation or regulations is not necessary for the accomplishment of public purposes or the provision of public protection, at the time or in the future; and
- B. That there are practical difficulties that prevent strict adherence to the requirement for which relief is requested; and
- C. The request for relief is the minimum amount necessary to eliminate the practical difficulty; and
- D. Relief may not be requested for built construction. Administrative relief is not available for built construction that fails to comply with zoning standards. In such cases, retroactive relief may only be granted through a variance pursuant to Div. 9.6. Quasi-Judicial Review. This applies both to construction initiated without required building permits and to construction undertaken with building permits but not completed in accordance with approved plans.

### Sec. 9.5.6. **Action After the Decision**

#### **A. Posting of Approved Administrative Relief Certificate**

Whenever an administrative relief certificate is issued by the Director, the recipient of the certificate must post a copy of same on a sign not less than 6 square feet with the words "Notice of Issuance of Zoning Administrative Certificate" in letters not less than 4 inches high in a conspicuous place on the effected property so that the sign and the permit can be easily viewed from the public street on which the property fronts. Said sign must be posted no later than 48 hours after the issuance of the certificate and will not be removed for 30 days. In the event the sign is not timely posted, the deadline to appeal an approved administrative relief certificate will commence to run starting on the actual date of sign posting.

#### **B. Term**

The administrative relief certificate will be valid for 36 months from the date of issuance. In addition, it will continue to be valid while an application for a building permit pursuant to that certificate is pending or during the term of a valid building permit issued pursuant to that certificate. The Director may amend the approval of the certificate based on the requirements of the Ordinance in effect on the date of any application for amendment to the building permit.

## DIVISION 9.6. **QUASI-JUDICIAL REVIEW**

### Sec. 9.6.1. **Applicability**

Quasi-Judicial Review is required for the following:

- A. **Variance.** A request for a deviation from the provisions of the Zoning Ordinance when meeting specific criteria, unless noted as an exception below:
  - 1. The Board of Zoning Adjustment (BZA) may grant a variance only up to 150% of the maximum vehicle parking requirements provided in *Sec. 8.3.4. Vehicle Parking*.
  - 2. The BZA will have no power to grant a variance for the following:
    - a. A use which is prohibited or otherwise not permitted within the district.
    - b. An increase in the floor area ratio permitted within the district.
    - c. A sign which is prohibited or otherwise not permitted within the district regulations, except as provided in *Div. XX. Nonconformities*.
- B. **Appeal of Administrative Decision.** An appeal of any decision made by the Director, or their designee, in the enforcement of the Zoning Ordinance.

### Sec. 9.6.2. **Application Submittal**

#### A. **Variance**

##### 1. **General**

Applications for variances will be filed with the Director, and with supporting material as required by rules of the BZA and the Zoning Ordinance. No application for variance will be accepted except from the owner or designated agent of the property involved.

##### 2. **Variance from Parking Maximums**

- a. In addition to meeting the general variance application requirements, the applicant must submit a parking study justifying the proposed number of off-street parking spaces.
- b. The parking study must include a traffic study, subject to the Director's approval as to form, which contains the following:
  - i. Estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the Director.
  - ii. Evidence that there is no available off-site parking to satisfy the proposed increase within 800 feet of the lot. This must include all publicly available commercial parking lots or commercial parking structures, whether free or paid.
  - iii. Evidence that the parking increase cannot be satisfied through a Transportation Management Plan (TMP), transit or bicycle use, shared parking, ride-share, internal capture, or similar techniques.

- iv. Evidence that the proposed maximum parking ratios do not exceed the existing parking ratios of comparable uses within 3 miles. This must include reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by FAR, total floor area, lot area, use, and location regarding bus and rail transit and multi-use trails.
- v. The source of all data used to develop the recommendations.

## **B. Appeal of Administrative Decision**

1. It is the intent that an aggrieved person have only one opportunity to challenge the decision of an administrative official in the enforcement of the Zoning Ordinance. The Secretary to the BZA has the authority to reject any appeal contrary to this intent.
2. Appeals may be taken by any person aggrieved by any decision of the Director in the enforcement of the Zoning Ordinance, by filing with the official from whom the appeal is taken, and with the BZA, a notice of appeal specifying the grounds thereof, within 30 days after the action appealed from was taken, unless the rules of the BZA specify a longer period generally or for a particular class of cases. Where the appellant is not the applicant that sought the decision appealed from, within 24 hours of filing the appeal, the City must notify the applicant of the filing of the appeal by e-mail and by certified mail, as such e-mail and mailing address are listed in the application.
3. Other than one with a legal or equitable interest in property that is the subject of the decision, "any person aggrieved" means one who demonstrates before the BZA that their property will suffer special damage as a result of the decision complained of rather than merely some damage which is common to all property owners similarly situated.
4. Where the appellant appeals from the approval of a permit granted to another, the permit holder or applicant may elect at their own risk to proceed as authorized in the permit subject to the outcome of the appeal.
5. Where the permit applicant or property owner for the subject property appeals the zoning official's administrative decision to the BZA, the appeal stays the decision, including any code enforcement action, during the pendency of the appeal, unless the Director certifies to the BZA - after notice of appeal has been filed - that, based on the facts stated in the certificate, a stay would, in their opinion, cause imminent peril to life or property. In such a case, the decision will not be stayed except by a restraining order issued by a court of competent jurisdiction upon application, with notice to the officer from whom the appeal is taken, and for due cause shown.
6. No appeal will stay any zoning enforcement action pending in the Atlanta Municipal Court or Superior Court.
7. An appeal of an administrative decision will toll the running of any expiration period of a building permit, certificate, or other approval authorized pursuant to this Ordinance during the pendency of the appeal before the BZA and any subsequent reviewing appellate body.

## **C. Withdrawal**

An applicant may withdraw an application for quasi-judicial review at any time prior to the BZA's decision by submitting written notice of withdrawal.

## Sec. 9.6.3. Application Review

### A. Director Review

The Director will review the facts of each variance application and will submit written findings of fact and recommendations to the BZA at or before the time each application is heard. The Secretary may recommend that the BZA impose one or more conditions of approval, whether proffered by the applicant or not, relating to the variance application that it believes may be necessary in the particular case to protect the public interest should the variance be approved.

### B. Notice

#### 1. Published Notice

At least 15 but not more than 45 days before the date of the hearing, the Director must cause to be published within a newspaper of general circulation within the territorial boundaries of the City a notice of the hearing. The notice must state the date, time, place, and purpose of the hearing. The notice must include the location of the property and the proposed variance on the property.

#### 2. Posted Notice

A sign containing information set forth in *subsection B.1* must be placed in a conspicuous location on the property at least 15 but not more than 45 days before the date of the hearing. For variances, the applicant is responsible for posting the property. For appeals, the Director is responsible for posting the property. One such sign will be placed adjacent to each street the property abuts, as described in the application or appeal, for each 600 feet for which the property abuts such street, provided that not less than 1 sign will be erected, that where there are intersections with another street or streets at least 1 sign will be placed between such intersections, and that if there is a remainder from multiples of 600 feet, an additional sign will be erected. Notwithstanding the above requirements, if the property under consideration does not abut a street and is not a part or parts of property abutting a street, no posting is required.

#### 3. Mailed Notice

The Director must also cause notice of the date, time, and place of the hearing and the nature of the proposed action to be sent by regular mail, with mailing postmarked at least 15 but not more than 45 days before the hearing. Such mail will be addressed to the applicant and to the owner of the property involved in the proposed action and to property owners (as ownership and address appears on the tax records of Fulton or DeKalb County) of all property within 300 feet of the property involved in the proposed action.

### C. Board of Zoning Adjustment (BZA) Decision

#### 1. Procedure

- a. Before taking action resulting in a decision, as described by state law (currently OCGA § 36-66-4(g)), the BZA will conduct a hearing on the proposed action. Where the proposed action includes more than one variance for the same property, only one hearing will be required under this Section.

- b. The BZA may adopt policies and procedures not inconsistent with state law or this Zoning Ordinance governing the conducting of the public hearing including the matter presented, order of presentation, time limits for each speaker, number of speakers, decorum and order.
- c. An equal amount of time for the presentation of data, evidence, and opinion will be afforded to proponents and opponents of each zoning decision. The minimum amount of time will be no less than 10 minutes per side for the presentation of data, evidence, and opinion of each zoning decision.
- d. Printed copies of these policies and procedures will be available for distribution to the general public. Printed copies of these policies and procedures will be available at each hearing.

## **2. Action on Variance**

- a. The BZA will make separate findings of fact and conclusions on each proposed variance to the Zoning Ordinance. The BZA may adopt in whole or in part the findings of fact and conclusions contained in the administrative staff report, or it may make its own findings of fact and conclusions.
- b. The BZA may, by majority vote of the members present, approve, approve with conditions, withdraw, defer action to the next regular meeting or to a date certain, or deny the proposed variance.
- c. The BZA may impose one or more conditions of approval, whether or not proffered by the applicant, the secretary or another, relating to the variance application that it finds, based on actual evidence, that may be necessary in the particular case to protect the public interest.
- d. The Director must provide a written decision to the applicant within a reasonable time after the final decision.

## **3. Action on Appeal of Administrative Decision**

- a. The BZA will fix a reasonable time for the hearings of the appeal and give notice thereof as well as due notice to the parties in interest. Upon the hearing, any party may appear in person or by agent or by an attorney.
- b. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and to that end will have all the powers of the administrative official from whom the appeal was taken and may issue or direct the issuance of a permit provided all requirements imposed by the applicable laws other than these are met. The board will decide the appeal within a reasonable time.

## **Sec. 9.6.4. Criteria for Review and Decision**

### **A. Variance**

#### **1. General**

Variations may be granted by the BZA only upon making all of the following findings:

- a. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography;

- b. Such conditions are peculiar to the particular piece of property involved;
- c. The application of the zoning ordinance to this particular piece of property would create an unnecessary hardship; and
- d. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of the Zoning Ordinance.

## 2. Hardship

Each zoning case must be evaluated on its own facts, no single rule can determine what constitutes a hardship sufficient to justify a variance. However, the following factors must be considered:

- a. **Land-Based Hardship.** The hardship must relate to the physical characteristics of the land itself, not to the personal circumstances or actions of the property owner.
- b. **Impact on Property, Not Person.** A variance may only be granted when the regulation imposes a hardship on the property, rather than on the individual seeking relief.
- c. **Unnecessary Hardship.** Consider the extent to which the regulation deprives the owner of a permitted use, or of the reasonable enjoyment of a permitted use, in a way that most would consider unnecessary under the circumstances. “Unnecessary” means that preserving the spirit and intent of the zoning ordinance does not depend on denying the variance.
- d. **Balance of Interests.** The decision must balance the community’s interests with the property owner’s right to reasonable use of their land.
- e. **Denial of All Permitted Uses.** Consider whether denying the variance would effectively deprive the owner of all permitted uses of the property, including whether a permitted use could reasonably be constructed without the requested relief.

## 3. Variance from Parking Maximums

In lieu of the general criteria in subsection **A.1.** and **A.2.** above, the BZA must find that all the following have been met:

- a. A parking study demonstrating that the variance is justified.
- b. The additional parking will not cause undue negative impacts on pedestrian spaces, transit ridership or service, bicycle movement, or overall traffic flow on adjacent streets.
- c. Accommodating the excess parking will not degrade the overall urban design quality of the proposal.
- d. All aboveground parking is screened and lined with active uses according to the standards of **Sec. 8.3.5. Vehicle Parking Design** and the applicant is not requesting any relief requiring such standards.
- e. Excess parking does not diminish the quality and viability of existing or planned streetscape enhancements adjacent to the site.
- f. Parking is not accessed from any Storefront Street or Primary Street.

## Sec. 9.6.5. Action After the Decision

### A. Appeal of Decision

Any person aggrieved by a decision of the BZA may seek review of such decision in the manner prescribed in O.C.G.A. § 36-66-5.1. The Director or the Secretary to the BZA will have the authority prescribed in O.C.G.A. § 36-66-5.1(c)(1) and the City of Atlanta Department of Law will have the authority prescribed in O.C.G.A. § 36-66-5.1(c)(2).

## DIVISION 9.7. **NONCONFORMITIES**

### Sec. 9.7.1. **Intent**

- A. Within the districts established by the Zoning Ordinance, or amendments that may later be adopted, there exist lots, structures, uses of land and structures, and characteristics of use which were lawful before the Ordinance was passed or amended but which would be prohibited, regulated or restricted under the terms of the Zoning Ordinance or future amendment. These are called nonconforming lots, nonconforming structures, nonconforming uses, and nonconforming characteristics of use as the case may be. These nonconformities are declared by the Zoning Ordinance to be incompatible with permitted uses in the districts involved. Based on that incompatibility, the following intents are stated:
1. It is the intent of the Zoning Ordinance to require removal or cessation of certain of these nonconformities, and to permit others to continue until they are otherwise removed or ceased. Nonconformities run with the land and benefit a subsequent purchaser. The burden belongs to the one who seeks to use land in a way that would be prohibited by this part to establish legal nonconforming status under the terms of this Division. They must show that the use or structure was lawful from inception based on the Zoning Ordinance in effect at the time and that the use remains legally nonconforming as provided herein.
  2. It is the intent of the Zoning Ordinance that nonconformities will not be used as grounds for adding other structures or uses prohibited elsewhere in the same district, or enlarged upon, extended, or expanded except as provided in this Division.
  3. It is the intent of the Zoning Ordinance that nonconforming use of land, structures, or land and structures in combination will not be extended or enlarged after passage of the Zoning Ordinance by attachment on a building or premises of signs intended to be seen from off the premises, or by addition of other uses, of a nature generally prohibited in the district involved.
  4. It is not the intent of this Division to affect rights which accrued before the adoption of this part or to impair or eliminate vested rights acquired under existing laws for future use of land or to create a new obligation.

### Sec. 9.7.2. **Nonconforming Lots of Record**

- A. Existing lots platted and recorded in Fulton County or DeKalb County plat books at the effective date of adoption or amendment of the Zoning Ordinance may not meet the minimum regulations or requirements of the districts in the Zoning Ordinance. Where existing lots of record are below the minimum dimensions established by the Zoning Ordinance, the following requirements apply:
1. To be acknowledged as a lot of record for development purposes, the lot must satisfy the requirements of *City of Atlanta Code of Ordinances, Sec. 15-07.006* or be shown on a recorded plat bearing a City stamped subdivision approval.
  2. An existing lot of record in any district that is below the required lot area or lot width for the district may be used for any use permitted by the district, provided all other standards of the district are met.

**NONCONFORMITIES**

3. Where relief is necessary to make an existing lot of record buildable, a variance may be considered by the Board of Zoning Adjustments, according to **Sec. XX. Variance**.

### Sec. 9.7.3. Nonconforming Structures

- A. Where a lawful structure exists at the effective date of adoption or amendment of the Zoning Ordinance that could not be built under the terms of the Zoning Ordinance by reasons of restriction on area, lot coverage, height, setbacks, its location on the lot, or other requirements concerning the structure, such structure may be continued so long as it is and remains otherwise lawful subject to the following provisions:

#### 1. All Districts

##### a. Enlargement or Alteration

- i. No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity.
- ii. Where a structure is used for a permitted use, any structure, or portion thereof, may be enlarged or altered if the degree of its nonconformity remains the same or is decreased.

##### b. Reconstruction After Destruction

###### i. One- and Two-Dwelling Unit Structures

Should a nonconforming one- or two-dwelling unit structure, or nonconforming portion of structure, be destroyed by any means, in whole or in part, it may be reconstructed in the same location and upon its previous foundation and to its previously existing height, provided the reconstruction does not increase the previously existing degree of nonconformity and the reconstructed structure is used for a permitted use.

###### ii. All Other Primary Structures

- a) Should any other nonconforming structure, or nonconforming portion of structure, be destroyed by accidental casualty, as distinguished from intentional casualty or ordinary wear and tear, in whole or in part, it may be reconstructed in the same location and upon its previous foundation and to its previously existing height, provided the reconstruction does not increase the previously existing degree of nonconformity and the reconstructed structure is used for a permitted use.
- b) Should any other nonconforming structure, or nonconforming portion of structure, be destroyed by any means other than accidental casualty to an extent of more than 60% of its replacement cost at the time of destruction, it is not permitted to be reconstructed except in conformity with the provisions of the Zoning Ordinance.

###### iii. Accessory Structures

Where there is a nonconforming accessory structure, reconstruction after destruction is subject to the same provisions governing the primary structure to which they are an accessory. See **subsection 3.A.1.b.** above.

**c. Moving**

- i. A nonconforming structure may be moved on its own lot only if the Director determines that such movement reduces the degree of nonconformity to the maximum extent reasonably feasible, or eliminates such nonconformity, but must in no case be moved on its own lot in such a manner as to increase the degree of nonconformity.
- ii. Where a nonconforming structure is moved off its previous lot, it must thereafter conform to the regulations for the district in which it is located after it is moved.

**d. Strengthening**

Nothing contained in this Division prevents the strengthening or restoring to safe condition of any structure, or part thereof, declared unsafe by any public official charged with protecting the public safety, upon order of such official.

**e. Reducing of Building Setbacks**

In cases where land is taken for public purposes from legal lots of record at the time of such taking in such manner as to reduce building setbacks previously provided in relation to a portion of a structure below setbacks requirements generally applicable within the district, the portion of the structure involved will be considered nonconforming.

**2. House-Scale Form Districts**

In House-Scale (H-) districts, where an existing lot does not have access to a street, a Special Use Permit is required for the development of a single-unit detached dwelling. All other permitted principal and accessory uses and structures are allowed by right on such lots.

**3. Neighborhood-Scale Form Districts**

- a. In the Neighborhood-Scale Form Districts, vertical additions and renovations to existing one- and two-dwelling unit structures and accessory structures with nonconforming side setbacks are authorized within such nonconforming side yards provided the following standards are met:
  - i. Such additions and renovations do not exceed the existing degree of horizontal setback nonconformity along the length of the nonconforming structure; and
  - ii. Such additions and renovations within the nonconforming area must not exceed the maximum building height allowed in the applicable zoning district minus the distance of the existing setback nonconformity. For example, if an existing one-dwelling unit structure encroaches into the required side setback by 4 feet, any vertical addition or renovation will be limited to a maximum height of 31 feet, which is the allowed maximum height (35 feet) minus the existing nonconformity (4 feet).
- b. This provision will be applied only to additions and renovations to existing nonconforming one-dwelling unit structures and accessory structures within Neighborhood-Scale Form Districts. New structures must comply with the side setbacks required in the applicable zoning district.

### Sec. 9.7.4. Nonconforming Uses

- A. If characteristics of use, such as off-street parking and loading, lighting, or other matters pertaining to the use of land, structures, or premises are made nonconforming by the Zoning Ordinance, as passed or amended, no change is allowed that increases the degree of nonconformity by more than 120 square feet or 10% of the total floor area, whichever is more; but changes may be made which result in the same or a lesser degree of nonconformity. In cases where land is taken for public purposes in such a manner as to reduce off-street parking or loading space below that previously existing and required by the regulations for the district, the deficiency created will be considered a nonconforming characteristic of the use.
- B. The parking requirements for a business that is to be operated with a license for the consumption of malt beverages, wine, or distilled spirits, must not be based on the continuation of nonconforming off-street parking arrangements for any Food and Beverage Use (*Div. XX. Use Definitions*) that has previously operated at that location unless there has been a valid license for on-premises consumption of the same type as that under consideration, in operation at that location within the previous 12 months.
- C. Except as otherwise permitted in this Division, any use in lawful existence which by passage of the Zoning Ordinance, or amendment thereafter, would require a Special Use Permit will without further action be considered a conforming use. So long as such use remains the same, structural alterations within the general limits of the regulations of the Zoning Ordinance will be permitted on the premises of such use; but any enlargement, extension, movement or replacement of such use, with respect to land or structures, will require a Special Use Permit, as appropriate to the case, as though it were a new use.

### Sec. 9.7.5. Nonconforming Signs

- A. For requirements, see *Div. 8.6. Signs*.

### Sec. 9.7.6. Combination of Nonconformities

- A. If lawful use involving individual structures, or of structures and premises in combination, exists at the effective date of adoption or amendment of the Zoning Ordinance that would not be allowed in the district under the terms of the Zoning Ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:
  - 1. No existing structure devoted to a use not permitted by the Zoning Ordinance in the district in which it is located is allowed to be enlarged, extended or moved, except in changing the use of a structure to a use permitted in the district in which it is located.
  - 2. Any nonconforming use may be extended throughout any ordinances of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of the Zoning Ordinance, but no such use is allowed to be extended to occupy any land outside such building.
  - 3. Changes in nonconforming uses of major structures or a combination of major structures and uses are permitted as follows:
    - a. To any use conforming to the regulations of the district in which located; or

- b. To any use permitted in the most restrictive district in which such original nonconforming use is first permitted by the Zoning Ordinance, subject to the requirements and regulations concerning such use in the district; provided however, that no nonconforming nonresidential use is changed to a residential use in any district in which similar residential uses are not permitted.
4. Any major structure, or combination of major structure and land, in or on which a nonconforming use is superseded by another use, lawful or otherwise, will thereafter conform to the regulations for the districting in which it located; and the nonconforming use may not thereafter be resumed.
5. When a nonconforming use of a major structure or combination of major structure and premises is discontinued for a continuous period of 1 year, regardless of the intent of the owner or tenant to not abandon the use, the structure, or structure and premises in combination, will not thereafter be used except in conformity with the regulations of the district in which it is located. Such restriction will not apply if such cessation is as a direct result of governmental action impeding access to the premises.
6. Where nonconforming use status applies to a combination of structure and premises, removal or destruction of the structure will eliminate the nonconforming status of the land.
  - a. "Destruction," for the purpose of this subsection, is defined as damage to an extent of more than 60% of the replacement cost at the time of destruction.
  - b. Where damage is to an extent 60% or less of replacement cost, such structures may be restored to the same or lesser size in the same location; provided however, that restoration begins within 12 months of damage and be diligently carried to completion; and nonconforming use may be resumed and continued as before, or on a lesser scale, but is not permitted to be enlarged or intensified. Unless restoration is timely initiated and completed, the use must terminate and not be resumed without regard to intent to continue the use. Remodeling will not be deemed removal or destruction. Destruction made necessary by repairs, maintenance or remodeling will not be construed to be removal or destruction.

## DIVISION 9.8. **ENFORCEMENT**

### Sec. 9.8.1. **General Standards**

- A. The Office of Zoning and Development will administer and enforce the Zoning Ordinance except as otherwise provided therein. It will also be the duty of all officers and employees of the City, and especially of all members of the police department, to assist the Director, Office of Zoning and Development, by reporting to the Director any seeming violation in construction, reconstruction or land use.
- B. The Director must promptly investigate complaints of violations, reporting their findings and actions to complainants, and must use their best endeavors to prevent violations or to detect and secure the correction of violations. If they find that any of the provisions of the Zoning Ordinance are being violated, they will in writing notify the person responsible for such violation, indicating the nature of the offense and ordering the action necessary to correct it.
- C. They will order discontinuance of illegal use of land, buildings or structures; removal of illegal buildings or structures or of illegal additions, alterations or structural changes; discontinuance of any illegal work being done; or will take or cause to be taken any other action authorized by the Zoning Ordinance or the laws of the City or State to ensure compliance with, and prevent violations of the provisions of the Zoning Ordinance.
- D. If a violation of the Zoning Ordinance exists or is proposed, the law department may, in addition to other remedies provided by law, institute injunction, abatement or any appropriate action or proceeding to prevent, enjoin, abate or remove such violation.

### Sec. 9.8.2. **Penalties**

- A. Any person, firm or corporation violating any of the provisions of the Zoning Ordinance will be deemed guilty of an offense and upon conviction thereof will be punished as provided in *the City of Atlanta Code of Ordinances, Sec. 1-8*. Each day's continuance of a violation will be considered a separate offense. The owner of any buildings or premises or parts thereof, where anything in violation of this part exists, and any architect, builder, contractor or agent of the owner, or any tenant, who commits or assists in the commission of any violation, will be guilty of a separate offense.